

**STATE OF ILLINOIS**  
**ILLINOIS COMMERCE COMMISSION**

<b>Environmental Law &amp; Policy Center</b>	:	
<b>-vs-</b>	:	
<b>CleanChoice Energy, Inc.</b>	:	
	:	
<b>Complaint as to violations of Part 412 of</b>	:	<b>20-0499</b>
<b>the Illinois Commerce Commission's</b>	:	
<b>Regulations, the Public Utilities Act, and</b>	:	
<b>the Consumer Fraud and Deceptive</b>	:	
<b>Business Practices Act.</b>	:	

**ORDER**

**I. PROCEDURAL HISTORY**

On May 29, 2020, the Environmental Law and Policy Center (“ELPC”) filed with the Illinois Commerce Commission (“Commission”) a verified Formal Complaint (“Initial Complaint”) against CleanChoice Energy, Inc. (“CleanChoice”) alleging violations of the Public Utilities Act (“Act”), 83 Ill. Adm. Code 412 (“Part 412”) of the Commission’s rules, and the Consumer Fraud and Deceptive Business Practices Act (“Consumer Fraud Act”). On August 19, 2020, CleanChoice filed a verified Motion to Dismiss the Initial Complaint. On February 25, 2021, the Administrative Law Judge (“ALJ”) issued a ruling dismissing all of the counts in the Initial Complaint and giving ELPC the opportunity to file an amended complaint.

On April 1, 2021, ELPC filed a verified Amended Formal Complaint (“Amended Complaint”) against CleanChoice alleging violations of the Act, Part 412, and the Consumer Fraud Act. On October 18, 2021, CleanChoice filed its Verified Answer and Affirmative Defenses to the Amended Complaint.

The Citizens Utility Board (“CUB”) filed a Petition to Intervene on June 23, 2020, which was granted on July 1, 2020. Staff of the Commission (“Staff”), CleanChoice, ELPC, and CUB all participated in the proceeding. There were no other appearances or petitions to intervene in the proceeding. Pursuant to notice given in accordance with the law, rules and regulations of the Commission, status hearings were convened on July 1, 2020, November 17, 2021, and February 8, 2022 before the ALJ.

On February 1, 2022, ELPC filed the Direct Testimony of Martin R. Cohen. On March 4, 2022, ELPC filed the Revised Direct Testimony of Martin R. Cohen.

On February 22, 2022, CleanChoice filed a verified Motion to Strike Portions of the Direct Testimony of Martin R. Cohen (“Motion to Strike”). On May 31, 2022, ELPC filed a Response to the Motion to Strike. By agreement of the parties and approval of the ALJ, the Motion to Strike remained pending while the parties engaged in settlement

negotiations. As a result of the settlement approved herein, the Motion to Strike remains pending and unresolved. There are no other actions filed or pending before the Commission or in any court of jurisdiction involving the parties related to the facts and circumstances asserted in the Initial Complaint, Amended Complaint, and ELPC testimony (collectively, the “ELPC Filings”).

CleanChoice has disputed, and continues to dispute, the allegations, conclusions, alleged violations, and alleged liability asserted in the ELPC Filings, including but not limited to, disputing that certain actions or inactions by CleanChoice failed to comply with the Act, Part 412, and the Consumer Fraud Act.

On March 7, 2023, Staff, CleanChoice, ELPC, and CUB filed a Joint Motion for Approval of a Settlement Agreement and Entry of a Draft Agreed Order (“Joint Motion”), setting forth terms of a Settlement Agreement and Release (“Settlement Agreement”) for which they seek Commission approval, together with an agreed Draft Order for the Commission’s consideration.

Staff, through its Counsel, recommends that the Commission approve the Settlement Agreement and that the Commission enter an Order substantially in the form of the agreed Draft Order that Staff, CleanChoice, ELPC, and CUB proposed.

## **II. APPLICABLE LEGAL STANDARDS**

CleanChoice is an alternative retail electric supplier certified by the Commission to conduct business in Illinois.

Under the Act, the Commission has the authority, “after notice and hearing held on complaint or on the Commission's own motion: (1) to order an alternative retail electric supplier to cease and desist, or correct, any violation of or non-conformance with the provisions of Sections 16-115 or 16-115A of the Act; (2) to impose financial penalties for violations of or non-conformances with the provisions of Section 16-115 or 16-115A, not to exceed (i) \$10,000 per occurrence or (ii) \$30,000 per day for those violations or non-conformances which continue after the Commission issues a cease and desist order; and (3) to alter, modify, revoke or suspend the certificate of service authority of an alternative retail electric supplier for substantial or repeated violations of or non-conformances with the provisions of Sections 16-115 or 16-115A.” 220 ILCS 5/16-115B(b).

## **III. SETTLEMENT AGREEMENT**

As disclosed by the Joint Motion, Staff, CleanChoice, ELPC, and CUB agree that this proceeding be fully, finally, and completely resolved and concluded based upon a settlement, the terms of which such parties have incorporated into the Settlement Agreement. The Settlement Agreement is attached to this Order as Attachment A.

Staff, CleanChoice, ELPC, and CUB request Commission approval of the Settlement Agreement.

#### IV. COMMISSION ANALYSIS AND CONCLUSION

The Commission finds that the terms of the Settlement Agreement are reasonable and provide for an appropriate resolution of this docket. The Commission has legal authority to approve a settlement proposal that, as in the present case, has unanimous support of the parties and is otherwise appropriate. See *People ex rel. Hartigan v. Ill. Commerce Comm'n*, 148 Ill.2d 348, 367 (1992); *Bus. & Prof'l People for the Public Interest v. Ill. Commerce Comm'n*, 136 Ill.2d 192, 216-17(1989). Accordingly, the Commission approves the terms of the Settlement Agreement as the full, final, and complete resolution, conclusion, and settlement of this docket.

The Commission finds that settling this matter on the terms set forth in the Settlement Agreement is fair and equitable to all customers and all parties, and that the terms and conditions in the Settlement Agreement are reasonable. Accordingly, the Commission finds that the Settlement Agreement filed by Staff, CleanChoice, ELPC, and CUB in this matter should be approved.

#### V. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) CleanChoice Energy, Inc. is an alternative retail electric supplier within the meaning of Section 16-102 of the Act and is certified by the Commission to conduct business in Illinois;
- (2) an alternative retail electric supplier is required to comply with applicable provisions of Part 412 and, pursuant to Section 16-115A(a) of the Act, to "continue to comply with the requirements for certification stated in subsection (d) of Section 16-115";
- (3) the Commission has jurisdiction over the subject matter of the Complaint;
- (4) the findings of fact and conclusions of law set forth in the prefatory portion of this Order are supported by the record and are adopted as findings of fact and conclusions of law;
- (5) without making any admission of fault, wrongdoing, or guilt, or violations of the Act, Part 412, and the Consumer Fraud Act, or any criminal, civil, or other liability, CleanChoice Energy, Inc. has agreed to undertake certain actions described in the Settlement Agreement, which is attached to this Order as Attachment A;
- (6) the parties have agreed to accept the Settlement Agreement terms as the full, final, and complete resolution of the alleged violations against CleanChoice Energy, Inc.; and
- (7) the terms and conditions of the Settlement Agreement agreed upon by the parties are consistent with Sections 16-115, 16-115A, and 16-115B of the Act and Part 412, and the Settlement Agreement should be approved as full, final, and complete resolution of this proceeding and the allegations contained in the ELPC Filings.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the attached Settlement Agreement is hereby approved as the full, final, and complete resolution and conclusion of this docket and the allegations contained in the ELPC Filings.

IT IS FURTHER ORDERED that Staff, CleanChoice, ELPC, and CUB shall comply with the terms of the attached Settlement Agreement. The Settlement Agreement is hereby a public document and shall be made available in its entirety.

IT IS FURTHER ORDERED that if a party believes that another party is not in compliance with the Settlement Agreement, the party alleging non-compliance may apprise itself of the enforcement procedures contained in paragraph 7 of the Settlement Agreement.

IT IS FURTHER ORDERED that any motions, petitions, objections, and other matters in this proceeding which remain outstanding are hereby disposed of as moot.

IT IS FURTHER ORDERED that pursuant to Section 10-113(a) of the Public Utilities Act and 83 Ill. Adm. Code 200.880, any application for rehearing shall be filed within 30 days after service of the Order on the party.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 23rd day of March, 2023.

(SIGNED) CARRIE ZALEWSKI

Chairman